STATE OF MICHIGAN

COURT OF APPEALS

JAHAN EFTEKAR,

Plaintiff-Appellant,

v

WEBER'S INN,

Defendant-Appellee.

UNPUBLISHED
November 15, 2002

No. 233732
Washtenaw Circuit Court
LC No. 00-000302-NO

Before: Whitbeck, C.J., and Hood and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff was at defendant's hotel to teach a seminar to high school students. During a break, plaintiff went to a pay phone to telephone his wife. Plaintiff was aware of the presence of two benches and passed them, without incident, to use the telephone. He decided to stand to make the telephone call because the benches were low to the ground. Plaintiff bent forward because he could not see the numbers on his phone card. He lost his balance, noticed the bench, and tried to sit on the bench. Plaintiff wanted to utilize the bench to stop falling back, but he twisted and fell onto a second bench. In opposition to defendant's motion for summary disposition based on the open and obvious doctrine, plaintiff alleged that special aspects of the area precluded summary disposition. Specifically, plaintiff alleged that the area was dimly lit, sports memorabilia on the walls was distracting, and the bench placement was unconventional. Plaintiff's expert, a licensed builder, opined that the bench was "wobbly" on the date of inspection and that provisions governing the general standard of care for structures and installations were violated. The trial court held that the premises' condition was open and obvious and did not present an unreasonable risk of harm.

Plaintiff alleges that the trial court erred by granting defendant's motion for summary disposition. We disagree. An appellate court reviews the grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The open and obvious doctrine precludes liability if the invitee should have discovered the condition and realized its danger. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610-611; 537 NW2d 185 (1995). If the risk of harm remains unreasonable despite the open and obvious condition, the issue becomes the standard of care and presents a question for the trier of fact. *Id*. In *Lugo v*

Ameritech Corp, Inc, 464 Mich 512, 517-519; 629 NW2d 384 (2001), the Supreme Court clarified that an open and obvious condition might be unreasonably dangerous because of special aspects that impose an unreasonably high risk of severe harm. The condition must be effectively unavoidable, such as a fall into a pit or a hazard at the only point of exit. *Id*. In the present case, plaintiff testified that a loss of coordination placed him off balance, and he attempted to utilize the bench to break his fall. Thus, the lighting, sports memorabilia, and the nature of the benches cited by plaintiff did not play a role in his fall. Nonetheless, these common conditions do not rise to the level of an effectively unavoidable condition. *Id*. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Harold Hood
/s/ Kirsten Frank Kelly